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What You Should Know About the Pension Law

A Guide to the Employee Retirement Income Security Act of 1974, as Amended by the Retirement Equity Act of 1984, and the Tax Reform Act of 1986.

U.S. Department of Labor
Pension and Welfare Benefits Administration

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introduction

More than 50 million workers are protected by the Employee Retirement Income Security Act of 1974 (ERISA). ERISA sets minimum standards for pension plans in private industry. For example, it specifies when you can start building up pension benefits, how long you can be away from your job before you have a break in service, and your spouse's right to part of your pension in the event of your death. ERISA, which was enacted in 1974, was amended in 1984 by the Retirement Equity Act (REA) and in 1986 by the Tax Reform Act (TRA). REA provides additional protections for spouses of participants and liberalizes ERISA rules on participation and vesting. The rules are further liberalized by TRA. The purpose of this booklet is to explain the rights, safeguards, and guarantees of the law.

The law provides that:

- Age and service requirements for eligibility for pension plan participation must not be unreasonable (through participation provisions);
- People who work for a specified minimum period under a pension plan will receive at least some pension at retirement (through vesting, benefit accrual, and break in service provisions, which are defined later);
- The money will be there to pay pension benefits when they are due (through funding provisions);
- Plan funds must be handled prudently (through fiduciary provisions);
- Employees and their beneficiaries must be informed of their rights under their plans and their entitlements (through reporting and disclosure provisions);
- Spouses of pensioners are protected (through joint and survivor provisions); and
- The benefits of workers in some defined benefit pension plans are protected in the event of a plan termination (through insurance provisions). In a defined benefit plan, the amount of pension benefits you will receive when you retire is determined in advance.

You also are entitled to:

- Appeal if you are denied benefits;
- Exercise your rights under your plan and ERISA without harassment; or interference and
- Sue in federal court to recover benefits.

It is also important to be aware of what the law does not do. ERISA does not require any employer to establish a plan. It only requires those that do to meet certain standards. The law generally does not set specific amounts of money to be paid out as pensions and it does not deal with the adequacy of pension benefits. Termination insurance does not cover all pension plans. ERISA does not provide that an employee can automatically transfer pension credits or benefits if he or she changes jobs.

Participants' rights are described in title I of ERISA. The Act has four titles, of which only title I is enforced by the U.S. Department of Labor. The Internal Revenue Service of the U.S. Treasury Department, and a non-profit government corporation, the Pension Benefit Guaranty Corporation (PBGC) also carry out the law. The PBGC administers the law's plan termination insurance provisions.

The provisions of ERISA under the jurisdiction of the IRS and the PBGC are subject to interpretation by those agencies.

Exempt from title I of ERISA are governmental plans (including Railroad Retirement Act plans and plans of certain international organizations), certain church plans, plans maintained solely to comply with workers' compensation, unemployment compensation or disability insurance laws, plans maintained outside the United States primarily for non-resident aliens, and excess benefit plans (plans maintained solely to provide benefits or contributions in excess of those allowable for tax-qualified plans) which are unfunded.

ERISA applies to two types of private employee benefit plans—pension plans, which provide retirement income to employees or deferral of income by employees for periods extending to or beyond the termination of employment, and employee welfare benefit plans, which provide benefits in the event of sickness, hospitalization, surgery, accident, death, disability, or unemployment. An employee welfare benefit plan may also provide vacation, apprenticeship or other training, day care, scholarship, prepaid legal services, holiday, or severance benefits. Many provisions of ERISA do not apply to employee welfare benefit plans. See page 59 for further information on employee welfare benefit plans.

The rights and responsibilities of participants are stressed. Areas of ERISA which regulate pension plans but do not have much relationship to participants' actions are treated with less detail.

The contents of this booklet are not a legal interpretation of ERISA.

1 easily available plan information

ERISA requires plan administrators—the people who run plans—to give you in writing the most important facts you need to know about your plan. They must also provide you plan documents at reasonable cost if you make a written request.

ERISA requires that plan information be disclosed to participants and, in some cases, their beneficiaries, as well as to the government. Most plans are required to file financial reports with the Internal Revenue Service and summary plan descriptions with the U.S. Department of Labor. Some types of plans have been exempted from certain of the reporting and disclosure requirements through regulation. Other plans have been provided with alternative methods of complying with the reporting and disclosure requirements. The exemptions and alternative methods of compliance have been granted in order to avoid imposing unreasonable administrative burdens on plan administrators without adversely affecting the rights of participants.

The summary plan description must be furnished to participants and beneficiaries. It must give information on what the plan provides and how it operates. It also must be written in a manner to be understood by the average plan participant and, in an accurate and comprehensive manner, advise participants of their rights and entitlements.

The information which must be disclosed to participants and beneficiaries falls into four main categories:

(1) information which the administrator must furnish automatically,

(2) information which must be furnished within 30 days of written request,

(3) information which must be furnished within 30 days of written request and for which a reasonable charge may be made, and

(4) information which must be made available at the principal office of the administrator and other places.

The administrator must furnish automatically to participants and beneficiaries receiving benefits:

- the summary plan description, within 90 days after a person becomes a participant or beneficiary or within 120 days after the plan becomes subject to the reporting and disclosure provisions of the law
- summaries of any changes in the information required to be contained in the summary plan description, within 210 days after the end of the plan year in which the change is adopted
- an updated summary plan description every 5 years if there have been any plan amendments; and, if no amendments have been adopted, a new summary plan description every 10 years
- a summary of the annual report, within 9 months after the end of the plan year, or 2 months after the filing of the annual report if an extension has been granted for the filing of this report.

The administrator must furnish automatically to each pension plan participant:

- a statement of the nature, form, and amount of deferred vested benefits after your employment has ended
- information on pension plan survivor coverage.

If requested in writing, the administrator must furnish to any pension plan participant or beneficiary, a statement of total benefits accrued, accrued benefits which are vested, if any, or the earliest date on which the accrued benefits will become vested. This statement need not be furnished more than once in a 12-month period. Plans to which more than one unaffiliated employer contributes must furnish the statement only to the extent provided by regulations.

The administrator must furnish to any participant or beneficiary within 30 days of written request and for which a reasonable charge may be made:

- additional copies of the latest updated summary plan description
- the latest annual report Form 5500, 5500-C, or 5500-R.
- the documents under which the plan is established or operated, such as the plan rules or the trust agreement
- terminal reports, if any.

Plans must also respond to written benefit claims. If a claim for benefits is denied in whole or in part, the administrator must write to the participant or beneficiary to explain why the benefits were denied and advise how the denial may be appealed.

The administrator must make available to any participant or beneficiary at the principal office of the administrator and other places:

- the latest annual report Form 5500, 5500-C, or 5500-R.
- the documents under which the plan was established or is operated, such as the collective bargaining agreement or trust agreement.

The Internal Revenue Service will furnish to the Social Security Administration information on deferred vested benefits of plan participants who have terminated employment during a plan year before retirement. The Social Security Administration will provide that information to employees involved and their beneficiaries upon request and automatically when they apply for social security benefits.

Employees who are "interested parties," as defined by Internal Revenue Service regulations, must be notified of a request to the Internal Revenue Service for a determination on the tax status of a plan. Tax qualification gives tax benefits to a plan, the employer, and the employees participating in the plan. "Interested parties" have the right to see the application for approval and the supporting documents.

Summary plan descriptions and annual financial reports on file at the Department of Labor are available for examination at the Department of Labor in Washington, D.C. Copies may be obtained by writing to the Department of Labor, Public Disclosure Room, Room N-5707, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The telephone number is (202) 523-8771. Copies of documents may be purchased at a cost of 10 cents per page.

The Treasury Department must make available for public inspection applications for qualification of pension, profit sharing, and stock bonus plans, applications for tax exemption by organizations claiming to be tax exempt under section 501(a) of the Internal Revenue Code, documents supporting these applications, and letters or other documents issued by the Internal Revenue Service in response to the applications. Plans covering 25 or fewer participants are exempt from the public inspection provision. Information from which the compensation or deferred compensation of any participant could be determined is not subject to inspection.

Disclosable documents may be examined in Room 1567 of the National Office of the Internal Revenue Service, Washington, D.C., by submitting a request in writing to the Director, Disclosure and Security Division, Internal Revenue Service, P.O. Box 388, Ben Franklin Station, Washington, D.C. 20045. The documents filed in a particular district office of the Internal Revenue Service may be examined in that district office by sending a written request

to the Public Disclosure Officer of the district office. Photocopies of documents, for which a duplication charge is made, may also be obtained through written requests.

2 eligibility for pension plan participation

You are a "participant" in a plan when you become a member of the plan. Plans often require employees to meet eligibility requirements before being allowed to participate in the plan. ERISA imposes rules on employee pension plans regarding eligibility for participation, but does not impose rules on employee welfare plans regarding eligibility to participate.

The original ERISA minimum participation standards generally became effective on the first day of the plan year which began in 1976. Those standards were not applicable prior to 1976. REA amended the original ERISA participation standards for plan years beginning in 1985. For a plan maintained through one or more collective bargaining agreements ratified before August 23, 1984, REA participation standards do not become effective for plan years beginning before (1) the date when the last collective bargaining contract expires or (2) January 1, 1987, whichever is earlier.

Most pension plans require employees to meet age and service requirements before they are permitted to become plan participants. The original ERISA participation rules generally provided that a pension plan could not deny eligibility for participation beyond the time an employee reached age 25 and completed 1 year of service (or age 25 and 3 years, whichever comes later, for a plan which provided full and immediate vesting). Pension plans of tax-exempt educational institutions which provided for full and immediate vesting could have required 1 year of service and age 30.

REA, which generally became effective on the first day of the plan year beginning in 1985, amended the original ERISA participation rules so that eligibility for participation generally may not be denied if the employee is age 21 and has 1 year of service. Plans of tax-exempt educational institutions which provide for immediate 100 percent vesting may require attainment of age 26 and 1 year of service. Other plans which provide for immediate 100 percent vesting may require you to be age 21 with 3 years of service.

Under TRA, effective on the first day of the plan year beginning in 1989, a plan may not base eligibility to participate on

more than 2 years of service and a plan with 2 years of service eligibility requirement must provide for full and immediate vesting after 2 years of service.

Once the plan's eligibility requirements are met, an employee must begin participation in the plan at the start of the next plan year or 6 months after meeting the requirements, whichever is earlier.

Pension plans may not exclude an employee solely on the basis of part-time or seasonal employment if the employee has a "year of service" as defined by ERISA. Generally, a year of service is 1,000 hours of service during a 12-month period. Plans of the maritime industry may designate 125 days as constituting a year of service. In the case of a seasonal industry where the customary period of employment is less than 1,000 hours during the year, a year of service is to be defined by regulation.

There are other circumstances where an employee who may have less than 1,000 hours of service must be deemed to have completed a "year of service." Some plans, instead of counting all hours of service from records, use an equivalency permitted by regulations to determine hours of service. In such cases, employees who meet specified requirements must be treated as having the equivalent to 1,000 hours of service even though they may not actually have 1,000 hours of service. Plans which use another alternative method of crediting service (called "elapsed time") base eligibility to participate generally on whether 1 year has elapsed while the employee is employed with the employer or employers maintaining the plan, irrespective of the number of hours of service completed.

Participation cannot be denied an employee because he or she begins employment late in life if the plan provides defined contributions such as profit sharing, stock bonus, or money purchase plans. Plans defining benefits (not contributions) are permitted to exclude from pension plan participation an employee who begins employment within 5 years of the plan's normal retirement age. However, for plan years starting on or after January 1, 1988 (for collectively bargained plans, it is effective on the earlier of (1) the later of January 1, 1988, or the date on which the last of the contracts expires, or (2) January 1, 1990), employers no longer will be able to exclude from plan participation employees who start work within 5 years of a plan's normal retirement age. A "floating" normal retirement age that could be no later than the fifth anniversary of the employee's participation in the plan, could be established.

In addition, employees in defined benefit plans who work beyond normal retirement age will accrue pension benefits.

These requirements do not prevent pension plans from excluding employees on other grounds. However, qualified plans may exclude employees only for acceptable conditions that do not result in prohibited discrimination. "Qualified" plans are plans which obtain advantageous tax treatment by meeting the requirements of the Internal Revenue Code and the regulations and rulings issued by the Internal Revenue Service.

3 safeguarding pension benefit rights

ERISA imposes standards on employee pension plans to safeguard benefit rights. However, ERISA does not set comparable standards for employee welfare plans. Your right to a benefit from an employee welfare plan, such as a medical plan, generally would be governed by the plan rules.

BUILDING PENSION BENEFITS
What is an Accrued Benefit?

When you participate in a pension plan, you accrue pension benefits. The accrued benefit is the benefit that a plan participant has accumulated to a particular point in time. Benefit accrual, in the case of a defined contribution plan, is the process of accumulating funds in the individual's pension account. Normally, you start accruing benefits as soon as you join a pension plan, although ERISA allows defined benefit plans to delay the process of benefit accrual until the employee has completed 2 years of continuous service.

The law generally does not set benefit levels or specify precisely how benefits are to build up. However, it does provide that employees accrue benefits in some fair and orderly way.

Defined contribution plans, such as profit sharing or money purchase plans, must provide separate accounting with respect to each employee's accrued benefit. In these plans, a participant's accrued benefit is the balance in his or her individual account. In plans funded exclusively through insurance contracts (which meet certain specific requirements), the accrued benefit is the cash surrender value of the contract. Defined benefit pension plans (other than those funded solely through insurance contracts) must specify the basis for determining an individual's accrued benefit

and, in general, the participant's accrued benefit is defined in terms of the benefit payable at normal retirement age.

For any plan year beginning after 1983, a tax-qualified plan which is a "top-heavy plan" (see page 22) must provide minimum benefits (defined benefit plans) or minimum contributions (defined contribution plans). For defined benefit plans, the minimum benefit, expressed in the form of an annual retirement benefit, must be at least 2 percent of average compensation multiplied by years of service or 20 percent, whichever is less. Years of service during which the plan was not top-heavy do not have to be taken into account when counting years of service for this purpose. Also, plans do not have to count years of service completed in a plan year beginning before January 1, 1984. In general, average compensation refers to the consecutive years (not exceeding 5) of the participant's highest compensation.

For defined contribution plans (such as profit sharing or money purchase plans) the minimum contribution for plan years during which the plan is top-heavy generally must not be less than 3 percent of the participant's compensation. However, the percentage does not have to exceed the highest percentage at which contributions are made or required to be made for a key-employee (an officer or owner, in whole or in part, of the employer). In the event the contributions for key-employees are less than 3 percent, then the contributions for other employees will also be lower.

When determining the minimum benefits and contributions, social security benefits or contributions may not be considered. The top-heavy plan rules generally become effective for plan years beginning after 1983.

Formulas for Accruing Benefits in Defined Benefit Plans

A defined benefit pension plan (other than one funded exclusively through insurance contracts) must have a procedure for determining accrued benefits which satisfies one of three alternative benefit accrual formulas specified by ERISA. These formulas limit the amount of "back loading" (providing a higher rate for the accrual of benefits for the later years of service than for earlier years).

ERISA's benefit accrual requirements are effective for the first plan year which began in 1976, generally. What about prior years? The benefit accrual requirements for defined benefit plans are retroactive by at least one-half. For pre-ERISA years, the accrued benefit of a participant in a defined benefit plan must be the greater of (1) the accrued benefit determined under the plan as it was prior to ERISA or (2) one-half of the benefit which would have accrued if one of the three benefit accrual formulas had applied to those pre-ERISA years. The plan may choose any one of the three standards to apply to pre-ERISA service and it need not be the same one for future benefit accruals.

Plan Amendments Reducing Accrued Benefits

Generally, a plan amendment may not retroactively reduce the accrued benefits of any participant. However, ERISA provides that a plan amendment may reduce an employee's accrued benefit attributable to employer contributions for a plan year if the amendment is adopted within 2 1/2 months after the close of the plan year. (In the case of a multiemployer plan, the amendment can affect the current plan year and the 2 immediately preceding years.) Approval of such a retroactive amendment will be granted by the Internal Revenue Service only if it is necessary because of a substantial business hardship and a variance from the minimum funding standards of ERISA is unavailable or inadequate.

Reducing Accrued Benefits Under Multiemployer Plans

A multiemployer pension plan is a plan maintained under one or more collective bargaining agreements which require more than one employer to contribute and which meets any requirements imposed by Department of Labor regulations.

Multiemployer plans which are in reorganization due to financial difficulties may be amended to reduce or eliminate non-basic benefits. Benefits which are not guaranteed by the Pension

Benefit Guaranty Corporation are classified as non-basic benefits. These include benefits which are vested solely due to a plan termination and benefits or benefit increases under plan provisions in effect for less than 60 months. A 6-month notice must be given to participants before a plan amendment may reduce or eliminate non-basic benefits. A multiemployer plan which is insolvent may be required to suspend payment of non-basic benefits. A plan becomes insolvent if it is unable to meet its benefit obligations as they become due. A multiemployer plan terminated because all employers withdrew or were no longer required to make contributions generally must be amended to reduce and/or suspend non-basic benefits if the value of vested benefits exceeds the plan's assets. Any reduction must not exceed the amount necessary to ensure that the plan's assets are sufficient.

Prohibited Benefit Reductions

REA prohibits plan amendments which could directly or indirectly cause a reduction in accrued benefits. See the end of this section for the effective date of these REA provisions.

As a rule, a plan amendment reducing benefits which accrued before the adoption of the amendment is prohibited. If such an amendment (1) eliminates or reduces an early retirement benefit or a retirement-type subsidy, or (2) eliminates an optional form of benefit it will be considered a prohibited reduction of accrued benefits.

A retirement-type subsidy is to be defined by Department of Treasury regulations but those regulations are expected to provide that a subsidy which continues after retirement is to be considered a retirement-type subsidy. In this context, a subsidy exists if the benefit in question is greater than the actuarial equivalent of the normal retirement benefit. A retirement-type subsidy may not be reduced or eliminated in the case of a participant who before or after the amendment meets the plan's eligibility requirements for the benefit. Examples of benefits which are not to be considered as retirement-type subsidies are qualified disability benefits, a plant shutdown benefit that does not continue after retirement age, a medical benefit, a social security supplement, or a death benefit. On the other hand, a plan which provides, for example, unreduced

benefits to a participant with 55 years of age and 30 years of service is offering a retirement-type subsidy.

Suppose a plan provides a retirement-type subsidy by allowing a participant with 30 years of service to retire at age 55 with an unreduced benefit of $6,000 annually (the same dollar amount which would have been payable if the participant had retired at age 65). On April 1, 1986, the plan was amended to reduce early retirement so that participants with 30 years of service and 55 years of age will receive only 50 percent of the normal retirement benefit, or, in this case, $3,000. A participant who met the age 55 and 30-year requirements before the amendment would retain an accrued annual benefit of at least $6,000. Of course, if the participant works until age 63 and at that age has an accrued annual benefit of $6,500 under the plan as amended, he or she would receive $6,500 a year. If an employee attains age 55 with 30 years of service after the amendment, the benefit accrued up to the date of the amendment would serve as a minimum benefit regardless of the amendment.

Suppose a plan in 1986 paid actuarially reduced early retirement benefits at age 58 and then eliminated all early retirement payment provisions in 1987. As mentioned previously, a plan generally may not eliminate an early retirement benefit with respect to benefits accrued before the amendment. Therefore, amounts accrued by a participant who was not 58 before the 1987 amendment would be payable at age 58 if the participant later reaches age 58 and retires. Amounts accrued after the amendment would be paid at age 65.

An example of an optional form of benefit which may not be eliminated would be a lump sum distribution option. Department of Treasury regulations may allow plan amendments eliminating optional forms of benefits if (1) the benefit option is not subsidized or if (2) the benefit option is subsidized—a similar benefit with a comparable subsidy is provided, and if (3) the elimination does not take away a "valuable right."

REA does not prohibit a plan amendment which would reduce the rate at which benefits accrue in the future. For example, a plan which pays $5 in monthly benefits at age 65 for years of service up until 1987 may provide that years of service beginning in 1988 will be credited at the rate of $4 per month.

REA prohibitions against a reduction of benefits or an elimination of benefits options do not contain an exception in the case of terminated plans.

These REA rules apply to plan amendments made after July 30, 1984. There is a special effective date of April 1, 1985 for certain collectively bargained plans.

REA also requires defined benefit plans to specify the actuarial assumptions used to calculate benefits, such as early retirement benefits. This is important because there is a great difference between an early retirement benefit reduced by, say, 5 percent for each year a participant is short of age 65 and an early retirement benefit which is reduced at the rate of 2 percent.

Employee Contributions

In a pension plan where both employers and employees are required to contribute, ERISA specifies a procedure for determining the part of the accrued benefit (or account balance) attributable to the employee's own contribution plus interest. This is necessary because the amount attributable to employee contributions is always 100 percent vested.

With respect to voluntary employee contributions to a defined benefit plan, ERISA requires separate accounting and requires that the accrued benefit attributable to such contributions be determined in accordance with regulations.

Amount of Accrued Benefit

Since the amount of the benefit is generally not regulated by law, you can estimate how much pension you are building up only by examining your plan. Remember that ERISA does not require that employees accrue benefits for each year of service with an employer, but, instead, provides that an employee's accrued benefits are based on his or her years of participation in the plan. You must examine your plan to determine what constitutes a year of participation for full benefit accrual and what hours are counted for benefit accrual. (See explanation under section entitled "Counting Service.")

NONFORFEITABLE RIGHT TO PENSION BENEFITS

Meaning of Vesting

Although you accrue retirement benefits while participating in a pension plan, you do not have a right to these benefits unless they are vested. Accruing benefits over long periods means little if you can lose these benefits. Accordingly, through its vesting provisions, ERISA assures employees who work for a specified minimum period under a pension plan of at least some pension at retirement. ERISA's vesting provisions generally did not become effective until the first day of the plan year which began in 1976. If your service ended before that date, your rights would be governed by the rules of your plan.

Under ERISA, "vesting" has to do with when you acquire a legal right to your accrued benefits at retirement. A vested benefit is a nonforfeitable immediate or deferred benefit which you have gained. Usually, if you leave your job before retirement, your accrued benefits based on employer contributions become vested only if you have worked for the required period of time. Generally, individuals employed under a pension plan at the plan's "normal retirement age" (usually 65) must be fully vested in their accrued benefits even if they do not work the normal required period. Accrued benefits derived from the participant's own contributions must be fully and immediately vested.

Vesting Schedules

Pension plans subject to ERISA's original vesting provisions generally must provide that accrued benefits based on employer contributions must vest at least as fast as provided under one of the following schedules:

- Cliff vesting: full (100 percent) vesting after 10 years of service (with no vesting before completion of 10 years of service)

- Graded vesting (5 to 15 years): 25 percent vesting after 5 years of service, plus 5 percent for each additional year of service up to 10 years (50 percent vesting after 10 years), plus an additional 10 percent for each year thereafter (100 percent vesting after 15 years of service)
- Rule of 45 (based on age and service): 50 percent vesting for an employee with at least 5 years of service when his or her age and years of service add up to 45, plus 10 percent for each year thereafter.

Under any of the options, an employee must be at least 50 percent vested after 10 years of service and 100 percent vested after 15 years, regardless of age. "Class-year" plans (profit sharing, stock bonus, and money purchase plans in which each year's contributions vest separately) must provide for 100 percent vesting not later than the end of the fifth plan year following the plan year for which the contributions are made.

Under TRA, new vesting provisions will be generally applicable for plan years beginning after December 31, 1988 for participants who perform at least one hour of service in a plan year to which the new provisions apply. A special effective date applies to plans maintained under a collective bargaining agreement. If your plan is subject to a collective bargaining agreement, you may wish to contact your plan administrator to ascertain the effective date of the vesting provisions. When the new vesting provisions become effective, a single-employer plan (other than "top-heavy" plan subject to separate vesting requirements) will be required to provide that accrued benefits based on employer contributions vest at least as rapidly as one of the two following schedules:

1. Vest participants fully (100 percent) upon completion of 5 years of service;
2. Vest 20 percent after 3 years of service and then 20 percent per year thereafter until 100 percent vested after 7 years of service.

Also, when the new vesting provisions become effective, a multiemployer plan will be required to provide 100 percent vesting after 10 years of service.

Class-year vesting will no longer be permitted unless it produces vesting in the entire accrued benefit at least as favorable as under one of the two minimum vesting schedules. No change in a vesting schedule will apply to employees with at least 3 years of service at the time of the change without their consent.

For plan years beginning in 1984, special vesting rules apply to "top-heavy plans." In general, a top-heavy plan is a plan under which the accrued benefits or the account balances of key employees exceed 60 percent of the accrued benefits or account balances of all participants. Also, if an employer maintains more than one plan, the 60 percent rule may be applied to some or all of the employer's plans in the aggregate. The term key employees generally includes participants who are officers of the employer and participants who own a certain percentage (specified in the law) interest in the employer. The special vesting rules for top-heavy plans are effective for plan years beginning in 1984.

In order to be tax-qualified, a top-heavy plan must comply with the special vesting rules. After the effective date for any plan year in which a plan is a top-heavy plan, accrued benefits derived from employer contributions must vest at least as fast as provided by one of the following schedules:

- 100 percent vesting for each employee who has completed at least 3 years of service
- 20 percent vesting for each employee who has 2 years of service and 20 percent for each year thereafter until the employee is 100 percent vested after 6 years of service.

Limitations on Suspension of Benefits By All Covered Plans

Normally, once you have acquired a vested right to your accrued benefits, your plan cannot provide for forfeiture of your vested benefits in the event of misconduct or in the event you accept employment with a competitor (although benefits may be suspended due to reemployment under certain circumstances, described on page 33). You must read your plan documents carefully, though. If your plan's vesting provisions are more liberal than ERISA requires, (or, in the case of qualified plans, the Internal Revenue Service requires) it is possible that your plan provides for forfeiture of the vested benefits attributable to employer contributions under some circumstances during those years in which your benefits are vested earlier than required by ERISA or by the Internal Revenue Service. An example would be a plan providing 100 percent vesting after 5 years on the condition that you not accept employment with a competitor (but with such condition not applicable after 10 years of service).

A multiemployer plan may provide that benefits accrued as a result of "past service" with the participant's employer may not be payable if the employer ceases contributions to the plan. "Past service" refers to service before the employer had an obligation to contribute.

If your plan's vesting schedule is changed, the amendment cannot reduce your vested percentage in your accrued benefit accumulated to the date the amendment is adopted (or effective, if later). In addition, if you have at least 5 years of service, you must be given the option to elect, within a reasonable period, to remain under the pre-amendment vesting schedule even with respect to benefits accrued after the plan amendment. (3 years under TRA. See page 21).

Periods Counted for Vesting

You accrue benefits only during your years of participation in the plan. However, with some exceptions, once you begin participating in a pension plan, all of your "years of service" with the employer maintaining the plan are to be taken into account to determine the vested status of your accrued benefits, including service before you participated in the plan and service before the effective date of ERISA. (The meaning of "year of service" is discussed in the following section.)

The ERISA vesting provisions generally become effective on the first day of the plan year which began in 1976. The ERISA vesting provisions do not apply to employees whose service under a plan terminated prior to the 1976 plan year.

As originally enacted, ERISA generally allowed plans to exclude years of service before age 22. The Retirement Equity Act of 1984 (REA), which became effective for plan years beginning in 1985, does not allow plans to exclude years of service completed after age 18. As discussed on page 49, the effective date of REA for some collectively bargained plans may be as late as 1987.

The periods of service which ERISA allows plans to disregard for purposes of determining an employee's vested status include:

(1) periods for which the employee declined to contribute to a plan requiring employee contributions;

(2) periods for which the employer did not maintain the plan or a predecessor plan;

(3) service before 1971 unless and until the employee has at least 3 years of service after December 31, 1970;

(4) years when the employee was not 22 years of age (under the original ERISA rules) or 18 (under REA);

(5) years of service before the plan became subject to ERISA's vesting provisions if such service would have been disregarded under the plan's rules on break in service (see explanation at pages 27–30), then in effect; or

(6) if the employee has had a break in service after the effective date of the ERISA or REA break in service rules, service prior to the break.

Multiemployer plans may also exclude years of service with an employer after:

(1) the complete withdrawal of the employer from the plan;

(2) the partial withdrawal of the employer after the decertification of the collective bargaining representative (to the extent permitted by regulation); or

(3) the termination of the plan.

Although these periods may be ignored, some plans will count some or all of them for purposes of determining an employee's vested status. Therefore, you should check your plan documents to find out whether these periods are counted or ignored in your plan.

If you work for a corporation which is a member of a controlled group of corporations (as defined in the Internal Revenue Code), unbroken service for vesting usually must include all periods of employment with any of the corporations which are members of the controlled group. The same principle applies to service in unincorporated businesses under common control. Service with a "predecessor" of the employer must also be counted for vesting and participation if the successor employer continues the plan. In other circumstances, regulations specify the extent to which service with a predecessor of the employee's employer must be taken into consideration. Working under a multiemployer plan is like working under a single employer plan with respect to participation, vesting, and benefit accrual, in the sense that employees moving around within the plan do not lose accrued or vested benefits.

COUNTING SERVICE

An employee's rights with respect to participation, vesting, and benefit accrual are generally determined by reference to years of service and years of participation completed by the employee and 1-year breaks in service incurred by the employee. Whether an employee has completed a year of service is generally measured in terms of the number of hours of service credited to the employee during a 12-consecutive month period designated by the plan.

It is important to examine your plan documents carefully so you will know exactly what "service" is counted in determining a "year of service" and "years of participation" under your plan and what periods are NOT counted for participation, vesting, and benefit accrual. You need to know this so you will not inadvertently incur a break in service or fail to participate, accrue benefits, or have periods counted for vesting.

ERISA and its regulations set minimum standards for defining "year of service" and "hour of service" under pension plans. These are minimum standards only, so plans may define these terms more liberally. ERISA defines "year of service" for purposes of participation and vesting as a 12-month period during which an employee has 1,000 hours of service. An employee who works an average of 20 hours a week will have over 1,000 hours of service in a year. (In the maritime industry 125 days may be designated as constituting a year of service and, in the case of seasonal industries where the customary period of employment is less than 1,000 hours, ERISA specifies that "year of service" be defined by regulation.)

In general, a plan has a choice among three basic methods for determining whether an employee must be credited with a year of service for eligibility to participate or vesting and a year of participation for accrual of benefits. The plan may use a different method for each of these three purposes.

Under the *general method*, a plan determines hours of service from records of hours worked and hours for which payment is made or due. The regulations define an "hour of service" as

(1) each hour for which an employee is paid (or entitled to payment) for the performance of duties for the employer,

(2) each hour for which an employee is paid (or entitled to payment) by the employer on account of a period of time during which no duties are performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity, disability, layoff, jury duty, military duty or leave

of absence, except that no more than 501 hours of service are required to be credited to an employee on account of any single continuous period during which the employee performs no duties, and

(3) each hour for which back pay, regardless of mitigation of damages, is either awarded or agreed to by the employer, except that no more than 501 hours of service are required to be credited for back pay for a period of time during which the employee did not or would not have performed duties. These hours must be credited regardless of whether contributions to the plan for such hours are required or made. An employee is not required to be credited with hours of service as a result of payments from a plan maintained solely for the purpose of complying with workers' compensation, unemployment compensation, or disability insurance laws.

Under the *equivalency method* of crediting service, a plan may determine service to be credited to an employee based on hours actually worked, regular time hours worked, days of employment, weeks of employment, semi-monthly payroll periods, months of employment, shifts, or earnings. Different equivalencies may be used for different purposes, e.g., eligibility to participate and vesting. Not all hours of service which must be counted under the general method of counting service must be taken into account under this method. In order to compensate for this, a plan for example, which credits service based on hours actually worked must treat 870 hours of service as equivalent to 1,000 hours of service and 435 hours of service as equivalent to 500 hours of service.

Under the *"elapsed time"* method of crediting service, an employee's entitlement with respect to eligibility for participation, vesting, and benefit accrual is not based upon completion of a specified number of hours of service during a 12-month period. Instead, entitlement is determined generally with reference to the total period of time which passes while the employee is employed with the employer or employers maintaining the plan, regardless of the numbers of hours actually worked (or otherwise compensated) during those years.

The definition of "year of service" for purposes of participation and vesting is independent of the definition of "year of participation" for purposes of benefit accrual. The law does not define "year of participation" for purposes of full benefit accrual. Plans may use any definition of the term "year of participation" for purposes of benefit accrual as long as the definition is applied on a reasonable and consistent basis in accordance with regulations. Also, employees who work less than full time, but at least 1,000 hours per year, must be credited with a pro rata portion of the benefit that they would accrue if they were employed full-time.

To illustrate: If a plan requires 2,000 hours of service for full benefit accrual, then a participant who works 1,000 hours must be credited with at least 50 percent of the full benefit accrual.

BREAK IN SERVICE PROTECTION

A "break in service" can have serious consequences on your pension. To provide participants with some protection from losing pension benefits because of an interruption in employment or because of a failure to complete a sufficient number of hours of service, ERISA established rules governing what constitutes a "break in service." It also established rules governing the circumstances under which plans are required to recognize pre-break service if an employee "returns to employment" covered by the plan and the circumstances under which a break may wipe out pension credits for purposes of benefit accrual and vesting. Most pension plans have break in service rules. Plans may have more liberal rules than the ERISA minimum standards, but they may not be more strict.

The original ERISA break in service rules generally became effective for the plan year beginning in 1976. For plan years beginning before that effective date, whatever break in service rules then in effect may be applied.

REA amended the ERISA break in service rules for plan years beginning in 1985. Therefore, for most plans, whatever break in service rules were in effect prior to 1976 may be applied for that period. The original ERISA break in service rules were in effect for plan years beginning in 1976 through the plan year beginning in 1984, and the ERISA break in service rules as amended by REA would apply for plan years beginning in 1985. For a plan maintained through one or more collective bargaining agreements ratified before August 23, 1984, the REA break in service rules are not effective for plan year beginning before (1) the date when the last collective bargaining contract expires or (2) January 1, 1987, whichever is earlier.

Pre-1976 Break in Service

There were no federal break in service rules in effect prior to 1976. Therefore, if you had a break in employment prior to the 1976 plan year, you will have to check the plan rules then in effect to see whether you have a break in service. The plan rules are subject to the interpretation of the appropriate plan officials or the courts in the event of litigation.

Break in Service Rules for Plan Years Beginning in 1976 Through Plan Year Beginning in 1984

The original ERISA break in service rules were in effect for plan years beginning in 1976 through the plan years beginning in 1984.

Once a participant is partially vested under any plan except a defined contribution plan or a plan funded solely through individual insurance contracts, then all of his or her service both before a break and after a break must be combined. If the participant had no percentage of vesting before a break, and then returned to service, his or her pre-break service could not be disregarded unless the number of consecutive 1-year breaks in service equaled or exceeded the years of pre-break service.

To illustrate these rules, suppose a participant in a defined benefit plan had 3 years of service and 30 percent vesting before leaving the service of the employer for 7 years. Upon return, the participant's pre-break service could not be disregarded because he was partially vested and the plan would have to combine the participant's years of pre and post-break service. If, however, in the same example, the participant had no percentage of vesting, then the pre-break service could be disregarded since the years of absence (7) exceeded the 3 years of pre-break service.

A defined contribution plan or a plan funded solely by individual insurance contracts may provide, in the case of a nonvested participant, that service before a break need not be combined with post-break service for any purposes if the number of 1-year breaks in service equals or exceeds the number of years of pre-break service. However, such a plan may also provide that service before a break may, for some purposes, be disregarded after only

a 1-year break in service. If participant has a 1-year break in service, the plan may provide that service after the break will not serve to increase the percentage of vesting in benefits accrued before the break. In other words, a 1-year break under a defined contribution plan or a plan funded solely by individual insurance contracts may serve to forfeit any benefits not vested before the break. For example, a profit sharing plan could provide that a participant who has accrued $1,000 of benefits and is 25 percent vested in that accrued benefit ($250) before a 1-year break in service forfeits the nonvested portion ($750) upon the 1-year break. Upon a return to employment under the plan, the benefits accrued before the break remain frozen at that vesting level ($250), although the pre-break service will count towards the vesting of benefits earned after the return to employment under the plan.

ERISA does not permit plans to recognize as a "break in service" breaks which are shorter than 1 year. ERISA permits plans (other than those using the elapsed time method of crediting service) to designate as a "1-year break in service" a 12-month period during which a participant has not completed more than 500 hours of service (or, for plans using an equivalency method of determining hours, the number of hours specified in the regulations as equivalent to 500 hours). Plans of the maritime industry may designate a "1-year break in service" as a 12-month period during which a participant has not completed more than 62 days of service.

The hours that are counted are found in your plan's definition of "hour of service" described earlier. The 12-month period can be a calendar year, plan year, or other consecutive 12-month period designated by the plan as long as it is applied on a consistent basis and is in accordance with regulations. Therefore, if you have 501 hours of service during the year (or its equivalent for plans using an equivalency method), you will not incur a 1-year break in service. If you are in a plan using the elapsed time method you do not incur a break in service until a year has elapsed since your severance from service.

Break in Service Rules for Plan Years Beginning in 1985

REA modified the original ERISA break in service rules for plan years beginning in 1985. As noted above, the REA break in

service rules may not become effective for some collectively bargained plans until after the general effective date. REA made two major changes in the original ERISA break in service rules.

First, defined contribution plans and defined benefit plans funded through individual insurance contracts may not provide that a participant will forfeit pre-break benefits which were not vested until the participant has 5 consecutive 1-year breaks in service. Under the original ERISA break in service rules, such plans could have provided for the forfeiture of nonvested benefits which accrued before the break if the participant had a 1-year break in service.

Second, for nonvested participants, no plan may disregard pre-break service unless the participant has the greater of (1) 5 consecutive 1-year breaks in service, or (2) consecutive 1-year breaks in service equaling or exceeding the years of service earned before the break in service. Under the original ERISA break in service rules, pre-break service could generally be disregarded for vesting purposes if the number of consecutive 1-year breaks equaled or exceeded the years of service before the break in employment.

The REA also provides that for purposes of determining whether a participant will incur a 1-year break in service, certain absences relating to pregnancy, birth, adoption, or caring for a child must be taken into account. No more than 501 hours of service need be credited. The hours of service granted under this rule will be applied for the year in which the absence due to pregnancy, birth, etc., began if necessary to avoid a 1-year break in service for that year. Otherwise, those hours will be credited in the next year. A pension plan may provide that the participant must prove an absence was due to pregnancy, birth, etc.

Since a break in service can have very serious consequences, you should carefully examine your plan's "hour of service," "year of service," and "break in service" rules so that you do not inadvertently and unnecessarily lose pension benefits you have accrued. Remember, these are minimum standards only. Plans can be more liberal than ERISA requires.

PAYMENT OF PENSION BENEFITS

When Payment Begins

If you are a participant in a pension plan, payment of your benefits must begin (unless you elect a later date) as of the 60th day after the close of the plan year in which the latest of these events occurs:

(1) you reach 65 or, if it is earlier, when you reach the normal retirement age specified under your plan;

(2) the 10th year after you began participation in the plan; or

(3) you terminate your service with the employer.

TRA provides that, after December 31, 1988, distribution under a qualified retirement plan must generally commence no later than April 1 of the calendar year following the calendar year in which the participant reaches age 70½, without regard to the actual retirement date.

Early Retirement

ERISA does not require a pension plan to provide for early retirement. Therefore, plans which do provide for early retirement benefits are generally free to establish eligibility standards for the payment of early retirement benefits. However, early retirement benefits must be at least the actuarial equivalent of the normal retirement benefits. That is, the plan may first compute the monthly benefits expected to be payable at the normal retirement age and then may reduce that monthly amount to take into account such factors as age.

If a plan permits active employees to elect early retirement after a stated age and number of years of service, it must also permit terminated employees who had completed the required period of

service but had not reached the required age at the time of termination to elect to receive vested benefits when they do reach the required age.

Disability Pensions

A pension plan is not required to provide for disability benefits. When it does, the plan is generally free to establish its own rules for who is eligible for a disability pension. For example, a plan might require 20 years of service for disability retirement. The plan may also establish its own definition of total disability, which may be more rigid than the definition used for social security disability.

Private Pensions and Social Security Integration

ERISA permits private pension plans to have benefit formulas which provide for the integration of pension benefits with social security benefits. In other words, the amount of your private pension benefit may be affected by the amount of social security to which you presumedly will be entitled. Generally, in integrated plans, the monthly pension benefit is determined. Then, a percentage of the expected monthly social security benefit is subtracted from the pension amount. The amount remaining is the actual monthly pension benefit. Benefits of retired employees already in pay status and vested benefits of terminated employees cannot be decreased because of increases in social security benefits or wage base levels.

TRA modified the ERISA integration rules with regard to benefits accruing in plan years beginning in 1989. Under TRA, a single employer defined benefit pension plan meets the requirements for integrated offset plans if it provides that a participant's accrued benefit derived from employer contributions may not be reduced by more than 50 percent of the face value of the final pension benefit that would have accrued without the offset. Multiemployer plans are rarely integrated.

Permitted Suspension of Benefits

ERISA does not regulate the amount you may earn while receiving pension benefits. However, it does permit a pension plan (other than a multiemployer plan) to suspend the payment of benefits at or after the plan's normal retirement age if you return to work for an employer who maintains your plan. ERISA permits a multiemployer plan to suspend the payment of normal retirement benefits if you return to work in the same industry, the same trade, and the same geographical area covered by the plan as when benefits commenced.

In order to determine whether a participant is reemployed for any particular month or 4-or-5 week payroll period ending in a calendar month, a plan may provide that more than 39 hours of service or more than 7 days or shifts constitutes reemployment for the period in question. Benefits may be suspended only for months in which the participant works more than 39 hours or 7 days or shifts. However, the resumption of payments may be delayed until the first day of the third calendar month after the participant's reemployment ended. In such a case, the first payment generally must include payments not made after the month in which reemployment ended.

Before suspending benefits, the plan must notify the participant of the suspension during the first calendar month in which the plan withholds payments. The notification must give the participant information on why benefits are suspended, a general summary and a copy of the plan's suspension of benefit provisions, a statement regarding the Department of Labor regulations, and information on the plan's procedure under which a participant may request a review of the decision to suspend benefits. If most of this information is contained in the plan's summary plan description, the notification may consist of a reference to the appropriate pages of the summary plan description.

A plan which contains suspension of benefit provisions must advise participants of its procedures under which a participant may request a determination of whether a particular type of reemployment would result in a suspension of benefits. So, if you are a retiree and are considering taking a job, you may wish to write to the administrator of your plan to ask if your pension benefits would be suspended.

Plans which provide for the payment of early retirement benefits may provide for the suspension of those benefits due to *any* reemployment before normal retirement age, not only the kinds of reemployment which would result in a suspension of benefits after normal retirement age.

However, if the plan suspends benefits before normal retirement age under circumstances which would not have permitted a suspension after normal retirement age and the plan pays an actuarially reduced early retirement benefit, the plan must provide that benefits will be actuarially recalculated so that there is no effect upon the normal retirement benefit.

For example, a plan, other than a multiemployer plan, which suspends early retirement benefits due to reemployment with an employer who maintains the plan, is not required to actuarially recalculate benefits. Similarly, a multiemployer plan would not have to recalculate benefits if the participant's early retirement benefits are suspended due to reemployment in the same industry, the same trade, and the same geographical area covered by the plan as when benefits commenced.

Lump Sum Distributions

ERISA does not require pension or profit sharing plans to provide for lump-sum distributions. Lump-sum distributions are possible only if the plan specifically provides for such payments and the participant meets the plan's eligibility requirements.

If your employment terminates and you believe you may be entitled to a lump-sum distribution, you should file a written claim with the plan administrator. If you do not know the plan's requirements for the payment of benefits in a lump sum, you may wish to write to the plan administrator to request a copy of the plan rules. A reasonable charge may be made for the plan rules.

See page 56 for information on how to defer taxes if you receive a lump-sum distribution of vested benefits from your plan.

Cash-Out Of Vested Benefits

Under ERISA, a plan may provide that it will cash-out the vested benefits of a participant who leaves employment. Generally, if the present value of the vested benefit does not exceed $3,500, the plan may cash-out a participant. If the amount exceeds $3,500, the participant and the spouse (or the surviving spouse) must

consent in writing to the cash-out whether it is made before or after the annuity starting date. Even if the amount does not exceed $3,500 consent must be obtained if the annuity starting date has occurred.

If the cash-out is equal to the value of the employee's full benefit accrual, no pay-back provision is required by ERISA in the case of later reemployment because no benefits have been lost. In order to reinstate the accrued benefits which were not vested at the time of separation (and therefore not cashed out), an employee whose vested benefits have been cashed out and is later reemployed under the plan may be required by the plan to repay the amount of the cash-out plus (for defined benefit plans) interest. If the plan requires the employee to repay the cash-out before restoring the accrued benefits which were not vested before separation and the employee does not repay the cash-out, the pre-separation service would still have to be taken into account for vesting of benefits accrued after reemployment, subject to the break in service rules (described on page 27).

Withdrawal of Employee Contributions

With some exceptions, plans may not forfeit your accrued benefit derived from employer contributions solely because you withdraw your own contributions. However, plans which require employee contributions may provide that if you withdraw your own mandatory contributions before the employer-financed benefits are at least 50 percent vested, the employer-financed benefits will be forfeited. Such a plan must contain a "buy back" provision, though, under which the employee's forfeited benefits will be fully restored upon repayment to the plan of the withdrawn contributions plus interest. A plan which did not provide for mandatory contributions by participants after the date of ERISA's enactment (but did before then) may provide that a participant will forfeit a proportionate part of pre-ERISA accrued benefits derived from employer contributions, even if 50 percent or more vested, if any of the participant's own mandatory contributions are withdrawn. The plan need not contain a "buy back" provision.

Plans Involving A Union And A Group Of Employers

Many union members are covered by collective bargaining agreements that require their employer to contribute a specified amount per hour worked to a pension plan. These plans are generally classified as multiemployer plans since they are collectively bargained and require more than one employer to contribute. The contributions made under such plans are generally considered to be employer rather than employee contributions. Therefore, a participant must have the required number of years of service in order to become entitled to a vested benefit derived from the employer contributions. Also, the fact that an individual is paying union dues does not necessarily mean that such an individual is also earning pension credits. Generally, one must be working for a contributing employer in order to earn pension credits.

A multiemployer plan might cover workers within the jurisdiction of only one union local or district or it might cover workers in several states or the entire nation. Workers who move from one participating employer to another participating employer will have their service with both employers combined unless they have a break in service. However, ERISA does not provide that a worker who moves from a company which contributes to one plan to a company which contributes to another plan must have his service combined. This is true even if both plans involve the same national union. A number of plans will combine service under reciprocal agreements, but if you are thinking of moving to a job outside the geographical coverage of your plan, you should check your summary plan description to see whether your plan maintains reciprocal agreements with other plans.

4 protection from mismanagement of plan and misuse of assets

ERISA protects employee pension and welfare plans from financial losses caused by mismanagement and misuse of assets through its fiduciary provisions.

What is a fiduciary? According to the dictionary, a fiduciary is a person who occupies a position of trust, one who holds or controls property for the benefit of another person. With respect to employee benefit plans, ERISA defines a fiduciary as anyone who exercises discretionary control or authority over plan management or assets, anyone with discretionary authority or responsibility in the administration of a plan, or anyone who provides investment advice to a plan for compensation or has any authority or responsibility to do so. Included in the definition then, would be plan trustees, plan administrators, members of a plan's investment committee, and generally, persons who select these individuals.

What kind of protections do the fiduciary requirements provide? The fiduciary provisions:

- outline the duties of fiduciaries
- prohibit certain transactions
- require that employee benefit plans be established and maintained under a written instrument and that provision be made for one or more "named fiduciaries" with authority to control and manage the operation and administration of the plan
- require that the assets of employee benefit plans, with some exceptions, be held in trust unless the assets consist of insurance or annuity contracts
- require bonding of all persons who handle funds or property of a plan to provide protection against plan losses through fraud or dishonesty
- prohibit persons convicted of certain crimes from serving in specified positions with respect to employee benefit plans for a stipulated period of time.

There are four general fiduciary duties. A fiduciary must:

- discharge his or her duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of

providing plan benefits to them and defraying the reasonable expenses of administering the plan

- act with the care, skill, prudence, and diligence under the circumstances then prevailing that a "prudent man" acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims
- diversify plan investments in order to minimize the risk of large losses unless it is clearly prudent not to do so
- operate in accordance with plan documents and instruments.

In order to prevent conflicts of interest and self-dealing, fiduciaries are barred from a number of prohibited transactions and activities. A fiduciary may not:

- be paid for his or her services if he or she is already receiving full-time pay from an employer or union whose employees or members are participants
- deal with plan assets for his or her own account or in his or her own interest
- act in any capacity involving the plan on behalf of a party whose interests are adverse to the interests of the plan, its participants, or its beneficiaries
- receive any consideration for his or her personal account from any party dealing with the plan in connection with a transaction involving plan assets
- permit the investment to exceed 10 percent of plan assets in certain securities of the employer or of a substantial affiliation of the employer or certain real property leased to the employer (except in the case of profit sharing plans, stock bonus, thrift or savings, employee stock ownership plans, and certain money purchase plans)
- cause a plan to engage in a transaction with a "party in interest" if the transaction involves, directly or indirectly, sale, exchange, or lease of property; lending money or extending credit; furnishing goods, services or facilities; or transfer of assets to or use of assets by or for the benefit of a party in interest.

A fiduciary who breaches any responsibility or duty under ERISA may be personally liable to make good any losses to the plan resulting from such a breach and to restore to the plan any profits made through improper use of plan assets. A fiduciary is also subject to such other equitable or remedial relief as a court may deem appropriate, including removal.

Who is a party in interest? Parties in interest (called "disqualified persons" in the Internal Revenue Code) include any administrator, officer, trustee, custodian, counsel, or employee of a plan; a fiduciary; any person providing services to a plan; the employer of covered employees; an employee organization whose members are covered; an owner, direct or indirect, of 50 percent or more of

the company; certain relatives of parties in interest; and certain other affiliated corporations, employees, officers, directors, partners, and joint-venturers.

ERISA provides some exemptions to the prohibited transactions provisions. For example, loans by the plan to parties in interest who are participants or beneficiaries are generally permitted if they are available on a nondiscriminatory basis, bear a reasonable rate of interest, are adequately secured, and are made in accordance with plan rules. Likewise, under certain conditions, arrangements with a party in interest for office space or legal, accounting, or other necessary services for the plan are permitted if no more than reasonable compensation is paid.

The Department of Labor has established a procedure for both individual and class exemptions from the prohibited transactions provisions. However, any exemption granted must be administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of the plan's participants and beneficiaries.

The fiduciary provisions generally became effective in 1975.

5 protection from inadequate financing

ERISA also protects participants of certain pension plans from financing which is inadequate to pay the promised benefits. In order to make sure that sufficient money is available to pay promised pension benefits to employees when they retire, ERISA sets down rules for funding pension plans. The ERISA funding rules do not apply to employee welfare plans.

For defined benefit pension plans, ERISA requires employers to fund each year the pension benefits earned that year by the employees (called the "normal cost"). In addition, formulas are established for amortizing the cost of pension benefits for employees' service in the past for which monies have not yet been set aside ("past service liabilities"), for amortizing the cost of retroactively raising the level of benefits by plan amendment, and for making up experience losses and changes in actuarial assumptions. The system is somewhat like paying off a mortgage on a house.

Funding is monitored by actuaries and adjusted every 3 years to assure the soundness of plans.

In order to make underfunding as unprofitable as possible, ERISA provides severe sanctions. Unless a waiver is obtained, any failure by the employer to comply with the minimum funding requirements will result in an excise tax on the amount of the accumulated funding deficit. This tax is imposed whether the underfunding was accidental or intentional. The tax is to be imposed for each plan year in which the deficiency has not been corrected and, what's more, the excise taxes are not tax deductible.

These funding rules do not cover profit sharing and stock bonus plans. They apply to money purchase plans only to the extent of requiring that the employer contribute the amount specified by the plan formula. Pension plans funded exclusively by the purchase of certain insurance contracts and which satisfy certain conditions are exempt from the funding requirements.

6 protection from plan terminations and mergers

PROTECTION FROM PLAN TERMINATION

Both ERISA's plan termination insurance provisions and the Internal Revenue Code provide some protection to participants in the event of a plan's termination or insolvency.

ERISA created a government agency, the Pension Benefit Guaranty Corporation (PBGC), to administer a federally chartered insurance program. Within some limitations, PBGC's job is to insure the vested pension benefits of employees and retirees in certain defined benefit pension plans—up to a statutorily set limit. When a covered plan terminates or becomes insolvent without enough money to pay vested pension benefits, PBGC will guarantee the payment of certain vested pension benefits, up to the statutory maximum.

For further information on plan termination insurance, you should write to the PBGC. The address is 2020 K Street, N.W., Washington, D.C. 20006, Attention: Coverage and Inquiries Branch.

The Internal Revenue Code also provides some protection in the event of a termination or partial termination of a tax-qualified retirement plan. The Internal Revenue Code provides for full and immediate vesting of all accrued benefits, to the extent then funded, upon the complete or partial termination of a tax-qualified plan. However, benefits vested solely because of the termination or partial termination of a plan, rather than because of completion of the required number of years of service, are not guaranteed by the PBGC. Therefore, whether benefits vested in the event of a termination or partial termination will actually be paid would depend on whether the plan is sufficiently funded to pay those benefits.

What is a "partial" termination? A plan might be considered partially terminated if a corporation terminates all employees of a particular plant or division. The benefits accrued by the employees, whether or not vested, then become vested by virtue of the partial termination.

See page 56 on how to minimize current taxes if you receive a lump sum payout from your plan.

PROTECTION FROM PLAN MERGERS

In the case of a merger or consolidation of plans or a transfer of assets or liabilities from one plan to any other plan, each participant must be entitled to receive a benefit after the merger which is at least equal to the value of the benefit he or she would have been entitled to receive before the merger. The before-and-after merger benefits are determined as if the plan had been terminated.

Unless otherwise provided by PBGC regulations, a multiemployer plan may not merge or transfer assets and liabilities unless the accrued benefit of all participants will not be lower after the effective date of the merger or transfer than the benefit before that date.

Also, where the merger or transfer is between two or more multiemployer plans, PBGC must be given 120 days advance notice, the merger or transfer must not be reasonably expected to result in a suspension of benefits due to insolvency, and an actuarial valuation must be performed for each plan before the effective date of the merger or transfer.

7 opportunity to provide survivor pensions to spouses

OPPORTUNITY TO PROVIDE SURVIVOR PENSIONS TO SPOUSES

The ERISA joint and survivor provisions generally became effective for plan years beginning in 1976. The Retirement Equity Act of 1984 (REA) substantially revised the original ERISA joint and survivor rules. In this section we will summarize the provisions of ERISA and REA. As you read this section it is important to keep in mind the effective dates of the two acts. Both laws set minimum standards. Plans are generally free to establish more liberal rules.

ORIGINAL ERISA JOINT AND SURVIVOR RULES

The original ERISA rules on joint and survivor annuities and early retirement survivor annuities became effective on the first day of the plan year which began in 1976 and remained in effect until the REA provisions came into effect. The original ERISA joint and survivor and early retirement survivor annuity rules do not apply to individuals whose coverage under a particular plan ended prior to the first day of the 1976 plan year. In such a case, the rules of the plan then in effect would govern. Pension plans in existence as of January 1, 1974 were not required by law to provide for benefits to spouses prior to 1976.

Before ERISA, many plans made no provisions for continuing any part of the retiree's pension to the surviving spouse after the

retiree's death. Other plans did allow a retiree to provide the surviving spouse with a portion of the retiree's pension if the retiree elected to have the amount of his or her pension benefit reduced.

What precisely are ERISA's joint and survivor provisions? ERISA requires that most retirement plans which provide that a participant may take retirement benefits in the form of a life annuity must also provide for a qualified joint and survivor annuity. A qualified joint and survivor annuity is an annuity for the life of the participant with a survivor annuity. The survivor annuity must be neither less than one-half nor greater than the amount of the annuity payable during the joint lives of the participant and spouse. A qualified joint and survivor annuity must be at least the actuarial equivalent of a single annuity for the life of the participant.

ERISA requires a plan to provide a survivor annuity as follows:

First, in plans which do not provide benefits before the normal retirement age stated in the plan (usually age 65), the plan is required to provide the joint and survivor annuity only to a participant who either attains or retires at or after the plan's normal retirement age. If a participant in such a plan dies before reaching the plan's normal retirement age, ERISA does not require the plan to provide the surviving spouse with a survivor annuity. The plan may provide in this case that the participant's vested benefits based on employer contributions are forfeited.

Second, for plans which provide for the payment of benefits before the plan's normal retirement age (that is, plans which provide for early retirement benefits), ERISA does not require that the plan provide the joint and survivor annuity until the employee is within 10 years of normal retirement age, or reaches early retirement age, whichever is later. For example, if a plan with a normal retirement age of 65 allows early retirement at age 48, the joint and survivor annuity need not be provided unless the participant begins to receive benefits at or after age 55. In the case of this plan, the plan need not provide the joint and survivor annuity (even at a later time) in the case of an employee who begins receiving benefits from the plan at age 48.

Third, plans are allowed to provide that a survivor annuity is not payable unless the participant and the spouse have been married to each other for at least 1 year on both the annuity starting date and the date of the participant's death.

ERISA provides that, unless the employee elects in writing not to receive benefits in the form of a joint and survivor annuity, the

joint and survivor annuity must be paid automatically to the survivor if the participant meets any one of the following conditions before his or her death:

(1) the participant begins to receive payments under the plan after attaining the plan's normal retirement age;

(2) the participant dies after attaining the plan's normal retirement age while in the active service of the employer maintaining the plan;

(3) in the case of a plan which provides for the payment of benefits before normal retirement age, the participant begins to receive payments under the plan on or after the date the plan is required to provide the joint and survivor annuity (i.e., upon or after the later of the plan's early retirement age or 10 years before the plan's normal retirement age);

(4) the participant separates from service on or after the date of the plan's normal retirement age or, in the case of a plan which provides for payment of benefits before normal retirement age, on or after the date the plan is required to provide the joint and survivor option and the participant dies before beginning to receive benefits.

Although plans are permitted to bear the cost of providing the joint and survivor annuity, they are not required to do so. ERISA allows plans to make reasonable actuarial adjustments for providing the joint and survivor annuity. The result is that a plan may reduce the amount of an employee's pension if a survivor annuity is provided for the spouse. The amount of the reduction would depend upon the plan provisions and the difference in ages between the employee and the spouse. To illustrate, a participant who would receive $100 a month without providing the survivor annuity could receive $80 a month as a joint and survivor annuity and, after the participant's death, the spouse would receive $40 per month. A plan may give the participant the alternative of paying premiums for the survivor option instead of reducing the participant's benefit.

ERISA allows a plan to provide, in the case of an employee who is eligible to retire prior to the plan's normal retirement age but who continues in active service of the employer after that age (and after the period that the joint and survivor annuity is required to be offered), that the survivor annuity is not automatic for the period the employee continues to work prior to normal retirement age. In such a case ERISA allows plans to require that a participant elect

the survivor annuity in writing in order for the spouse to receive a benefit in the event the employee dies before retiring or before reaching the plan's normal retirement age. This is called an early survivor annuity.

To illustrate. A plan with a normal retirement age of 65 allows an employee to receive early retirement benefits at age 55 and the employee does not retire at age 55 but continues working for the employer. In such a case, the plan may require the employee to elect the early survivor annuity in writing in order to provide the survivor annuity for the spouse in the event of the employee's death during this period. If the employee dies at age 57 before having retired, the spouse would receive an early survivor annuity if the participant elected it in writing.

If the participant in the plan discussed above retired at age 57, the joint and survivor annuity must be automatic at the time of the retirement unless the participant elected in writing not to receive it. If the participant in the plan described above worked until age 66, the joint and survivor annuity must be automatic when he or she reached age 65 (the plan's normal retirement age), unless the participant rejected it in writing.

Unless a plan provides that the joint and survivor annuity is the only form of payment for married participants, ERISA requires plans to provide each employee before the annuity starting date (within a time specified in regulations) a written explanation of the terms and conditions of the joint and survivor annuity and the effect of electing not to take the joint and survivor option (and, for plans providing early retirement benefits, the terms and conditions of an early survivor annuity and the effect of electing it). The employee must be given a reasonable period (specified in regulations) before the annuity starting date during which to elect in writing NOT to take the joint and survivor annuity and, in the case of employees in plans providing benefits before normal retirement age who continue working, to take the early survivor annuity.

Plans are allowed to provide that a participant's election of the early survivor annuity, a participant's election not to take the joint and survivor annuity, or a participant's revocation of an election is not effective if the participant dies within a specified period (not in excess of 2 years) from the date of the election or revocation unless:

(1) the participant dies from accidental causes and the accident occurred after the election or revocation was made; and

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity.

The original ERISA joint and survivor rules did not require pension plans to advise spouses of any elections made to reject a joint and survivor form of payment or a participant's refusal to elect the early survivor annuity option.

RETIREMENT EQUITY ACT JOINT AND SURVIVOR PROVISIONS

REA, which was enacted on August 23, 1984, made numerous significant changes in the original ERISA joint and survivor provisions. The effective dates of the various REA provisions are given at the the end of this section. It is important to keep in mind that the original ERISA joint and survivor rules apply until the effective dates of the REA provisions.

Under the REA minimum joint and survivor rules, if a participant dies while being partially or fully vested, the participant's spouse generally would be entitled to survivor benefits. This would be true unless the participant and the spouse had rejected survivor coverage in writing.

Married participants who retire after the REA joint and survivor provisions became effective will normally receive benefits in the form of a joint and survivor annuity. However, the participant and the spouse may elect in writing to reject the joint and survivor form of annuity.

The REA joint and survivor and preretirement survivor provisions generally apply to all pension plans except those defined contribution plans which provide that the surviving spouse will receive the participant's full account balance on the death of the participant and the participant does not elect to receive benefits in the form of a life annuity. Certain employee stock ownership plans are subject to special rules.

A qualified joint and survivor annuity means an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not greater than 100 percent of the annuity paid to the participant. The amount paid as a joint and survivor annuity is typically less than the amount which would have been payable if the participant had received a single life annuity but it must be the actuarial equivalent of a single life annuity.

A qualified preretirement survivor annuity is an annuity for the life of the surviving spouse. In the case of a defined contribution

plan, the preretirement survivor annuity generally must be in the form of a life annuity for the surviving spouse and represent on an actuarial basis not less than 50 percent of the participant's account balance. Under a defined benefit plan, the amount of the qualified preretirement survivor annuity must not be less than the amount which would be payable as the survivor portion of a joint and survivor annuity or its actuarial equivalent.

If a participant is not in pay status, and the present value of the qualified joint and survivor annuity or preretirement survivor annuity does not exceed $3,500, the plan may pay out the benefit in one lump sum. If the participant is receiving a pension (by reason of retirement or disability) the present value of which does not exceed $3,500, the plan may provide for payment in a lump sum if the participant and the spouse (or, where the participant had died, the spouse) consent in writing. If the present value of the benefit exceeds $3,500, the plan may provide for payment in a lump sum if the participant and the spouse (or if the participant has died, the spouse) consent in writing.

The election period to waive the qualified preretirement survivor annuity must begin on the first day of the plan year in which the participant attains age 35 and end on the date of the participant's death. An election to waive the preretirement survivor annuity applies only to the individual married to the participant at the time of the waiver. Thus, if a participant waives preretirement survivor coverage and later marries or remarries, the waiver would not affect the new spouse. Since the preretirement survivor coverage becomes effective when a participant becomes partially or fully vested, the election at age 35 simply governs when the election to waive coverage must be offered. For a participant who separates from service before age 35, the election period begins no later than the date of separation. Participants generally must be advised between the ages of 31 and 34 of the right to waive coverage with the consent of the spouse. The election period to reject the joint and survivor annuity is the 90-day period ending on the annuity starting date.

Under REA, participants and/or spouses must be allowed to revoke any election or make a new election at any time during the preretirement survivor or the joint and survivor annuity election periods. An election by a spouse to waive survivor benefits must acknowledge the effect of the election and be notarized or witnessed by a plan representative. Spousal consent to an election may not be required in certain cases when the spouse cannot be located. Plans which do not pass the costs of providing for spousal coverage on to the participant are not required to offer the election to waive survivor coverage.

One REA provision permits a plan to provide that survivor benefits will be payable only if the participant and the spouse were married for the 1-year period ending on the earlier of the date of the participant's death or the annuity starting date. Survivor benefits may not be denied under this REA provision if the spouse was married to the participant for less than 1 year before the annuity starting date but has been married to the participant for at least the 1-year period ending on or before the date of the participant's death. In such a case, the participant may be required to notify the plan when he or she has been married for 1 year.

In general, REA provisions on survivor benefits apply to plan years beginning after December 31, 1984. For collectively bargained plans maintained under one or more collective bargaining agreements ratified before August 23, 1984, REA provisions on survivor benefits generally do not apply to plan years beginning before the date on which the last collective bargaining agreement expires or January 1, 1987, whichever is earlier. However, there are special transitional rules with respect to benefits provided to particular participants. Generally, the new survivor provisions do not apply to a participant who does not have at least one hour of service or paid leave under the plan after August 22, 1984.

The REA rule that spousal consent is required for a participant to reject survivor coverage generally became effective for all covered plans on January 1, 1985.

There are 3 special transitional rules for certain vested participants who were alive as of August 23, 1984, whose pension had not started, and who would not otherwise be covered by the REA survivor provisions.

First, if such a participant has 1 hour of service or paid leave on or after August 23, 1984 and dies before the effective date of REA for his or her plan, then the preretirement survivor annuity provisions of REA apply.

Second, if such a participant had 1 hour of service in a plan year beginning after 1975 and terminated employment after 10 years of service with some percentage of vesting, then that participant may elect to have the preretirement survivor annuity provisions of REA apply.

Third, if such a participant had 1 hour of service under the plan after September 1, 1974, and section 205 of ERISA and 401(a)(11) of the Internal Revenue Code as in effect immediately prior to REA do not apply, then that participant may elect to have these sections, which relate to the availability of certain joint and survivor options, apply.

Notice of the elections for participants covered by rules 2 and 3 (mentioned in the above paragraph) must be provided in accordance with Internal Revenue Service regulations.

Examples of the 3 transitional rules are provided below: (1) A vested participant was covered under Pension Plan A until his death on September 14, 1984. The REA preretirement survivor annuity provisions did not become effective for Pension Plan A until July 1, 1985 (the first day of the 1985 plan year for Pension Plan A). However, under transition rule number 1, the participant would be covered by the REA preretirement survivor annuity provisions and the participant's spouse ordinarily would be entitled to a preretirement survivor annuity. (2) A participant's service under Pension Plan B terminated after 12 years of service in 1977 (after the original ERISA joint and survivor provisions became effective) at age 53 with a vested benefit. The participant was alive on August 23, 1984 and his pension is payable in 1988. Although the original ERISA rules in effect in 1977 when the participant's employment terminated did not require the pension plan to provide survivor coverage, the participant may elect, under rule number 2, to have the REA preretirement survivor annuity provisions apply. (3) Participant C's service terminated with a deferred vested benefit on November 17, 1974 (prior to the effective date of the original ERISA joint and survivor provisions). Participant C was alive on August 23, 1984 and his annuity is not payable until 1990. Participant C under rule number 3 would be eligible to elect to have the original ERISA joint and survivor rules apply.

8 other protections

CLAIMS PROCEDURE RULES

Employee benefit plans must have a reasonable and written procedure for processing written claims for benefits and for appeals if the original claim is denied. Therefore, if you believe you are entitled to a benefit from a pension or welfare benefit plan, you should write to the administrator of your plan to file a claim.

If a claim for benefits is denied, the participant must be notified in writing (generally within 90 days after the claim is filed) of the reason(s) for the denial and the specific plan provisions on which the denial is based. Any notice of denial must also tell you what additional information may be required in order to perfect your claim and how to appeal the denial.

You have at least 60 days in which to appeal a denial. A decision on your appeal generally must be made within 60 days unless the plan provides for a special hearing or the decision must be made by a group which meets only on a periodic basis. The decision on review must be furnished to the claimant and include the reasons for the decision together with references to plan documents.

If your claim is denied and you believe you are entitled to benefits, you may wish to write to the plan administrator to request a copy of the complete plan rules. A reasonable charge (up to 25 cents a page) may be made for copies of the plan rules. You could then compare the plan rules with the plan provisions cited by the plan in the denial to determine whether the rules have been properly applied.

You should consult your summary plan description (see page 7) if you have any questions about how your plan processes claims.

INTERFERENCE WITH RIGHTS

It is unlawful to discharge, fine, suspend, or discriminate against any participant or beneficiary for the purpose of interfering with the

attainment of any right to which he or she may become entitled under the plan or the law. This provision prohibits the practice of promising pensions and then dropping a worker to avoid paying a pension.

FREEDOM FROM HARASSMENT

Plan participants and beneficiaries cannot be discharged, fined, suspended, expelled, disciplined, or discriminated against for exercising any right or prospective rights under a plan or ERISA or for giving information or testimony in any inquiry or proceeding relating to ERISA. Moreover, the use of violence, coercion, intimidation, and the like to interfere with rights or prospective rights under a plan or ERISA is punishable by a fine up to $10,000 and/or up to 1 year in prison.

RIGHT TO SUE

Depending on the circumstances, civil action under ERISA can be brought by the Secretary of Labor, the PBGC, fiduciaries, plan administrators, plan participants, and others.

Plan participants and beneficiaries may bring a civil action:

- to compel a plan administrator to supply plan documents requested in writing by the participant or beneficiary within 30 days of the written request. A plan administrator who, in the court's judgment, fails to supply the information within the required time (unless the failure to supply the information results from circumstances reasonably beyond his control) may be personally liable to the individual who made the request for a fine of up to $100 per day
- to enforce rights under the plan and to recover benefits due
- to clarify his or her right to future benefits
- for appropriate relief from breach of fiduciary duty
- to enjoin any act or practice which violates any provision of title I of ERISA (that is, the reporting and disclosure, participation, vesting, benefit accrual, break in service, joint and survivor, funding and fiduciary provisions) or the terms of the plan, or to obtain other equitable relief

- to enforce the right to receive a statement of vested benefits upon termination of employment
- to obtain review of a final action of the Secretary of Labor, to restrain the Secretary from taking action contrary to ERISA, or to compel the Secretary to take action
- to obtain review of any action of the PBGC (or a receiver or trustee appointed by the PBGC) which adversely affects the participant or beneficiary.

U.S. district courts have exclusive jurisdiction over civil and criminal actions brought under title I of ERISA, except that cases pertaining to benefit recovery or clarification of future benefit rights brought by participants and beneficiaries may also be brought in state courts. U.S. district courts have jurisdiction to grant relief without respect to the amount in controversy or the citizenship of the parties.

In any action under title I of ERISA by a participant or beneficiary the court in its discretion may allow reasonable attorney fees and costs of action to either party.

An employee who has qualified as an "interested party" under regulations of the Secretary of the Treasury (as well as an employer and a plan administrator) may appeal to the U.S. Tax Court a determination by the Secretary of the Treasury concerning the initial or continuing qualification of a retirement plan or the Secretary's failure to make a determination.

PROTECTION FROM ALIENATION OR ASSIGNMENT OF BENEFITS

Plans are generally prohibited from allowing the assignment or alienation of benefits. However, REA makes it clear that the general prohibition against assignment or alienation does not apply to qualified state domestic relations orders. The qualified order must be based upon state domestic relations law and award a part of a participant's benefit in the form of child support, alimony, or marital property rights to an alternative payee (a spouse, former spouse, child, or dependent of a participant).

A qualified order may require the plan to pay benefits to the alternate payee on or after the date on which the participant attains or would have attained the earliest retirement age under the plan. This is true even if the participant does not terminate his or her

service under the plan at the earliest retirement age. For a defined contribution plan, the earliest retirement age is considered to be 10 years before the plan's normal retirement age. If the participant dies before the earliest retirement age, the alternate payee would receive benefits only if the court order requires the plan to pay survivor benefits. A qualified order may not require a plan to pay an alternate payee in any form not otherwise allowed under the rules of the plan. The REA rules on qualified domestic relations orders generally became effective on January 1, 1985. Plan administrators must honor orders entered before that date if payment in accordance with the order was being made on that date. Orders not being paid but issued before January 1, 1985 *may* be honored by plan administrators even if the orders do not meet all of the requirements for a qualified domestic relations order.

The REA rules on what a qualified domestic relations order must and must not provide are too extensive and technical to be completely described in this booklet. So, if you are or may become affected by such an order, you should review the law and regulations, check with the plan, and/or seek advice from an expert in the field.

REA amended the Internal Revenue Code so that in certain cases, an alternate payee or participant who receives his or her entire account balance within one taxable year under a qualified domestic relations order will be eligible for a tax-free rollover to an individual retirement account.

DOCUMENTS AVAILABLE FOR INSPECTION

See page 9 for a description of the documents available for public inspection at the Department of Labor and the Internal Revenue Service.

INFORMATION ON VESTED BENEFITS

See page 9 on how to obtain information on your vested benefits from the Social Security Administration.

GOVERNMENT LAWSUITS

A participant or beneficiary who brings an action in federal court to enforce rights under ERISA must provide a copy of the complaint to the Secretary of Labor and the Secretary of the Treasury by certified mail. A copy is not required to be provided in any action which is solely for the purpose of recovering benefits under a plan. The Secretary of Labor and, in some cases, the Secretary of the Treasury have the right to intervene in such action at their discretion.

The Secretary of Labor may bring a civil action under ERISA under several circumstances. However, his authority to bring a civil action to enforce ERISA's participation, vesting, and funding standards with respect to a "tax-qualified plan" is limited to two circumstances. One is a request by the Secretary of the Treasury that he bring action. The other is a request in writing by one or more participants, beneficiaries, or fiduciaries of a plan that the Secretary of Labor bring action and in this case he may do so only if the action is necessary to protect the claims of participants and beneficiaries under the plan.

9 other retirement arrangements

INDIVIDUAL RETIREMENT ACCOUNTS

Under TRA, for taxable years beginning in 1987, certain employees, including government workers, can open or continue to contribute to individual retirement accounts (IRAs). The amount contributed may be claimed as a deduction on your federal income tax return. Earnings on your IRA contributions are not taxable until you begin withdrawing benefits at age 59½ or later. Therefore, you may contribute to your own retirement plan and have earnings on those contributions accumulate on a tax-free basis. When you begin to withdraw the accumulated funds, the benefits will be taxable but you may be in a lower tax bracket than when you were employed.

IRA contributions are permitted if (1) an individual or married couple has an adjusted gross income (AGI) below a specified phase out level; or (2) neither the individual (or, if married, neither the individual nor the spouse) is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the individual's taxable year.

If either spouse was covered under a plan, then the AGI test would apply. Couples with AGI under $40,000 can deduct $2,000 (plus $250 for a non-working spouse or a spouse who elects to be treated as having no compensation). The amount they could deduct would generally be reduced proportionately for income above $40,000 and totally phased out at $50,000. A single person with AGI under $25,000 could deduct $2,000, and this generally would be reduced proportionately and phased out at $35,000.

Individuals may make non-deductible IRA contributions to the extent they are not eligible to make deductible contributions and earnings on such contributions are not subject to tax until they are withdrawn.

If you receive a lump sum payment from a tax-qualified pension plan due to retirement, disability, termination of your employment, or termination of your pension plan, you may be able to defer taxes by depositing the funds in an IRA. This is

called a tax-free rollover. Later, you could transfer this sum tax-free to a new employer's pension plan if the plan permits it.

The rules governing IRAs are adminstered by IRS. For further information, contact the nearest IRS office listed in the telephone directory.

PBGC also gives advice and assistance on evaluating the economic desirability of establishing IRAs and rollovers. For a copy of their booklet on IRAs, write to PBGC, Coverage and Inquiries Branch, 2020 K Street, N.W., Washington, D.C. 20006.

SIMPLIFIED EMPLOYEE PENSION PLANS

The Revenue Act of 1978 allows employers to establish a simplified employee pension plan (SEP). A SEP calls for employer contributions to be made to employees' individual retirement accounts. SEPs are subject to minimal reporting and disclosure requirements.

For taxable years beginning in 1987, TRA permits employees to elect to have SEP contributions made on their behalf or to receive the contributions in cash. Employees will also be able to contribute part of their salaries to the SEP under terms generally similar to a salary reduction plan. Elective deferrals under a SEP is limited to $7,000, the maximum amount an employee can elect to defer for any taxable year under all cash or deferred arrangements, indexed to inflation beginning in 1988.

SALARY REDUCTION PLANS

The Revenue Act of 1978 also allows employers to establish a salary reduction plan, known as a 401(k) plan. This operates similarly to an IRA, in that you set aside part of your salary — the amount is set by the company, but it can exceed the maximum required for IRAs. The amount set aside, and the earnings, are not taxable income until distributed. However, unlike IRAs, sometimes the employer may match your contribution, the money in a 401(k) plan is somewhat

accessible, you can borrow from a 401(k) plan and you may receive a more favorable tax treatment at the time of distribution.

Generally, under the 1986 tax law, for taxable years beginning in 1987, the amount you can set aside is subject to the $7,000 maximum on elective deferrals.

For years beginning in 1989, "hardship" withdrawals will be limited to an employee's elective deferrals. Except for matching contributions, the sponsor cannot condition contributions and benefits on an employee's elective deferrals. The sponsor cannot require an employee to complete more than one year of service in order to participate in the plan.

Cash or deferred arrangements are not available to employees of state and local governments unless the plan was adopted before May 6, 1986, or to employees of tax-exempt organizations, unless the plan was adopted before July 2, 1986.

EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

Employee Stock Ownership Plans (ESOPs) are classified as pension plans under ERISA. The primary difference between ESOPs and most pension plans is that the assets of the plans generally consist of employer stock. ERISA authorized the creation of ESOPs as one method of encouraging employee participation in corporate ownership. The value of your benefit in an ESOP is directly related to the value of the stock of the employer.

10 employee welfare benefit plans

An employee welfare benefit plan may provide benefits due to sickness, hospitalization, surgery, accident, death, disability, or unemployment. Such a plan may also provide vacation, day care, scholarship, prepaid legal services, holiday, severance, and apprenticeship or other training benefits.

Although no employer is required to set up an employee welfare benefit plan, those which do must comply with the reporting, disclosure, claims procedure, and fiduciary provisions of ERISA. Thus, unless subject to an exemption or an alternative method of compliance, an employee welfare benefit plan must file an annual financial report and a summary plan description with the government and furnish the summary plan description and a summary of the annual financial report to participants and beneficiaries. Within 30 days of a participant's written request, an employee welfare benefit plan must send a copy of the plan rules and the complete annual financial report. A reasonable charge to cover copying costs may be made for the plan rules and the annual financial report. Employee welfare benefit plans are also subject to the ERISA claims procedure provisions (see page 51) and the fiduciary provisions (see page 37).

In 1986, ERISA was amended by the Consolidated Omnibus Budget Reconciliation Act (COBRA) which requires group health plans of covered employers to provide employees and certain family members the opportunity for a temporary extension of health coverage at group rates in certain instances where coverage would otherwise end.

You should note that other provisions of ERISA do not apply to employee welfare benefit plans. Thus, the participation, vesting, benefit accrual, funding, joint and survivor, benefit reduction, break in service, and plan termination insurance provisions of ERISA do not apply to employee welfare benefit plans.

Therefore, the rules of a medical plan could delay participation beyond the time at which pension plans must allow an employee to participate and the rules of a death benefit plan could provide that benefits are payable from the general assets of the employer rather than from a trust or through insurance. Also, if an employee welfare benefit plan terminates, benefits are not covered under the ERISA pension plan termination insurance program.

ERISA provides that employee welfare benefit plans must be administered in accordance with their written rules. So if you meet the plan's participation requirements, you must be allowed to participate and if you do qualify for a benefit, you should receive that benefit.

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